

### REMARKS

Favorable reconsideration of the above-identified application is requested in view of the above amendments and the following remarks.

Claims 1-36 are pending in this application, with Claims 1, 14, 24 and 27 being independent, and currently amended. Support for the amendments may be found in at least paragraph [0059] of the present application.

Claims 7, 8, 20, 21, 33 and 34 are rejected under 34 U.S.C. § 112, second paragraph. Claims 1-3, 9, 11, 14-16, 22-29 and 35 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,809,741, hereinafter *Bates*. Claims 4, 6, 10, 17, 19, 30, 32 and 36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bates* in view of JP 09-125285A, hereinafter *Honda*. Claims 5, 18 and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bates* in view of *Honda* and further in view of U.S. Patent No. 5,930,385, hereinafter *Fujimoto*. Claims 12 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bates* in view of U.S. Patent No. 5,872,573, hereinafter *Adegeest*.

The Examiner is thanked for indicating that Claims 7, 8, 20, 21, 33 and 34 would be allowable if the rejection under 35 U.S.C. § 112, second paragraph, were overcome and the claims were rewritten in independent form.

#### § 112 Rejections

The Official Action rejects Claims 7, 8, 20, 21, 33 and 34 because the variables are not adequately defined. Applicant believes that a skilled person in the art would readily understand the meaning of the variables presented in those claims, especially in view of the specification, and that there is nothing indefinite in the

claims. However, to further prosecution, Claims 7, 8, 20, 21, 33 and 34 are amended to define that the variables are as defined in the present specification. It is believed that these issues have been adequately addressed and it is requested that the rejections be withdrawn.

#### § 102(b) Rejections

Claims 1, 14, 24 and 27 are rejected as being anticipated by *Bates*.

An embodiment is described in the present application. Paragraph [0053] describes that a synthesizing unit 16 extracts the position information circumscribing rectangles of all elements of the foreground image data and detects the colors of the background image data that correspond to those circumscribing rectangles, i.e., the background colors. The "background color" is an average color of the colors of the pixels in the circumscribed rectangles. Paragraph [0059] describes that the synthesizing unit calculates an adjusting color that makes the boundary between the foreground image data and the background image data recognizable for all colors of the background image data.

Claims 1, 14, 24 and 27 are amended to better define that the second image data has a plurality of colors, and that the uniform adjusting color is based on the colors of the first image data and all the colors of the second image data. For example, Claim 1 is directed toward an image processing device. A first color detection means is for detecting colors of a first image data by each processing unit. A second color detection means is for detecting colors of a second image data that serves as the first image data's background by each processing unit. A color adjusting means is for specifying a uniform adjusting color, based on the colors of

the first image data and the colors of the second image data, that makes the first image data recognizable against all colors of the second image data that serves as the first image data's background, concerning the first image data that have approximately equal colors.

*Bates* discloses a color contrast adjuster that applies new color combinations for text and background objects based on the current color combination for the text object and background object when the current color combination is a problem combination. *Bates* is targeted toward web pages having numerous background objects and foreground objects all having different colors, and therefore, different color combinations. Column 7, lines 9-22 describe, in relation to Fig. 2, that at least three background objects 240, 260, 263 are present on the display of that web page. Foreground objects such as 256, 280, 287, 264 and 265 are also present. However, as stated in column 7, line 20, foreground object 256 serves as a background object for text 275, 285. Basically, an object can be either a background object or a foreground object, or both, depending on its relative position with respect to the other objects.

*Bates'* image processing entails an evaluation of the color of each individual background object and foreground object, and determining a color combination for each background object and foreground object. Column 3, lines 48-51, describes that the "color combination" refers to the combination of colors of a background object and a text object. The color combination is determined to be either a "problem combination" or not. If it is a problem combination, alternate combinations are selected from a predetermined list of possible non-problematic combinations. This process is performed on each background object and foreground object.

Column 3, lines 50-53, of *Bates* describes that if a background object is multicolored, one of the colors of the background object and the color of the foreground object comprise the color combination. That is, according to one embodiment in *Bates*, only one of the background colors is used. Further, column 4, lines 24-27, describes another embodiment where if the background is multicolored, the color contrast adjuster will determine the top few colors in the multicolored background. It seems that when presented with a multicolored background, that *Bates* does not intend to make the foreground object recognizable against all the background colors, but rather only against the main background colors. Clearly, *Bates* discloses that not all the background colors are used to determine the color of the foreground.

Claim 1 is allowable at least because it defines that the second image data has a plurality of colors, and that the uniform adjusting color is based on the colors of the first image data and all the colors of the second image data. *Bates* does not disclose a first image data and a second image data that is the first image data's background, the second image data having a plurality of colors, and a uniform adjusting color that is based on all the colors of the second image data, together with the other claimed subject matter, as recited in Claim 1. Rather, *Bates* discloses that either one, or the top few, of the colors of the background image data contribute to establishing a non-problematic color combination. *Bates* does not use all the background colors, and for at least that reason Claim 1 is allowable.

Claims 14, 24 and 27 are allowable for similar reasons as those presented with regard to Claim 1.

§ 103(a) Rejections

Claim 17 is rejected as being unpatentable over *Bates* in view of *Honda*.

Claim 17 defines that the uniform adjusting color is specified by calculating an average value of all the colors of the second image data correlated to each of the colors of the first image data, and calculating the adjusting color for each of the colors of the first image data based on each of the colors of the first image data and the average color value of the second image data calculated in correspondence with each of the first image data.

The Official Action recognizes that *Bates* does not disclose or suggest the subject matter recited in Claim 17 relating to calculation of the average value of the colors of the second image data, together with the other claimed features. However, to satisfy that deficiency, *Honda* is relied upon for a disclosure of calculation of the average value of the colors of the background.

It would not have been obvious to modify *Bates* in view of *Honda* to include subject matter directed to calculation of an average value of all the colors of background image data. *Bates* discloses a situation where multiple background objects are present, those background objects not necessarily having the same color. Based on the color combination, the adequacy of the contrast between the background and the foreground is determined. *Bates* discloses two situations where the background is multicolored. First, only one of the colors of the background object and the color of the text object are used to judge the color combination (column 3, lines 50-52). Second, the color contrast adjuster will determine the top few colors in the multicolored background (column 4, lines 24-27). Clearly, the situation where the background object is multicolored is contemplated, and two

specific solutions are presented, neither relating to averaging the colors of the background object.

The Official Action asserts that it would have been obvious to modify *Bates* so as to replace the comparison of color combinations based on either one background color or the top few background colors with a comparison involving the average of all the background colors, and argues that motivation exists because averaging the background colors is a way of “detecting” the background color as disclosed in *Bates*. As the record stands, the Examiner has merely stated that the modification would have been obvious “since *Bates* teaches that the manner of detecting the colors of objects is well-known in the art (column 12, lines 10-13), and Honda discloses that one technique for determining a background color is to compute the average color values in the background.” The Official Action fails to establish a *prima facie* case of obviousness in two ways.

First, the Official Action merely proposes that it would have been possible to make such a modification, and not that it would have been either desirable or beneficial in the eyes of a skilled person in the art. It is a well established rule that when combining disclosures, to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), that the mere capability or possibility of making the proposed modification is not adequate to show a motivation to combine. MPEP in § 2143.01 explicitly states that “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” Here, no such desirability is either discussed in the references or pointed out in the Official Action. For at least that reason, a *prima facie* case of obviousness has not been established.

Second, the Official Action seems to assert that it would have been obvious to replace the determination of background color in *Bates* with *Honda's* technique for "determining" background color, i.e., averaging the background colors. However, *Honda's* averaging of background colors is not merely determining background color as described in *Bates*, and it would not have been obvious to a skilled person in the art to replace mere determination of a background color with averaging of the background colors. For at least that reason too, a *prima facie* case of obviousness has not been established.

For at least those reasons, Claim 17 is allowable.

#### Dependent Claims

Claims 2-4, 6, 9, 10, 15-17, 19, 22, 25-30, 32, 35 and 36 are allowable at least by virtue of their dependence upon allowable independent claims, and because they define features that additionally define over the cited document.

#### Conclusion

In view of the above amendments and remarks, Applicant respectfully requests that all the rejections be withdrawn and that this application be allowed in a timely manner.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference would be helpful in resolving any

remaining issues pertaining to this application; the Examiner is kindly invited to call the undersigned counsel for Applicant regarding the same.

Respectfully submitted,

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